

USSSO for Italy—Working on the Set of LA DOLCE VITA

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Introduction

Since 1993, the United States Army has provided one field-grade judge advocate to the United States Sending State Office for Italy (USSSO), U.S. Embassy, Rome.² This article provides an overview of the USSSO's structure and missions and its unique role in the resolution of legal, operational, and quality of life issues facing U.S. forces in Italy.

Organization

The Secretary of the Navy established the USSSO as a shore activity³ in 1956,⁴ after Italy enacted the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) into law.⁵ Navy judge advocates staffed the USSSO until 1988, when the Air Force also began to assign field-grade judge advocates to the office. In 1993, the Army transferred a field-grade billet from Germany to Italy for duty at the USSSO, thereby completing the transition to a tri-service legal office.

The Navy and Air Force judge advocates who are currently assigned to the USSSO are designated international law specialists, and they hold LL.M. degrees in international law. The office is also staffed with an Italian attorney-advisor, an Italian paralegal/translator, an Italian secretary/translator, and a Navy legal noncommissioned officer.

The USSSO functions under the U.S. European Command (EUCOM). The officer-in-charge (OIC) is assigned to the EUCOM⁶ and is rated by the Chief of Staff, EUCOM. While not assigned to the EUCOM Legal Advisor's Office, the USSSO OIC is the EUCOM's legal representative in Italy.

The commander-in-chief, U.S. Naval Forces Europe,⁷ has assigned many responsibilities to the USSSO; therefore, the USSSO also functions under the U.S. Naval Forces Europe. However, the USSSO is separate from both the Office of the Fleet Judge Advocate and the Office of General Counsel.⁸

The government of Italy has accredited the USSSO with diplomatic status⁹ (separate from the political section at the

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2. Since 1994, the USSSO has been located in the embassy's main chancellery building on Via Vittorio Veneto, the street on which some of Fellini's *LA DOLCE VITA* was filmed.

3. See 32 C.F.R. § 700.104(d) (1996) (describing the relationship of shore activities to the Navy's Shore Establishment). The Operating Forces of the Navy, the Navy Department, and the Shore Establishment are the three principal parts of the Department of the Navy. *Id.* § 700.104(a).

4. U.S. DEP'T OF NAVY, SECRETARY OF THE NAVY NOTICE 5450 (8 May 1956).

5. Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1972, 199 U.N.T.S. 67 [hereinafter NATO SOFA]. The NATO SOFA was ratified into Italian law by Law No. 1335 of Nov. 30, 1955, 1955 *Gazz. Uff.* No. 7, Jan. 10, 1956. The NATO SOFA should not be confused with the North Atlantic Treaty, which created the North Atlantic Treaty Organization. See North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 [hereinafter NATO Treaty]. Article III of the North Atlantic Treaty provides that further agreements may be entered into between the parties to "achieve the objectives" of the treaty. *Id.*

6. The USSSO is not a true joint office because only the officer-in-charge is assigned to the EUCOM. The Army judge advocate is assigned to Headquarters, U.S. Army Southern European Task Force, Vicenza. The Air Force judge advocate is assigned to Headquarters, 16th Air Force, Aviano Air Base, Aviano.

7. See 32 C.F.R. § 700.311 (summarizing the authority and responsibilities of the Commander-in-Chief, U.S. Naval Forces Europe).

8. The Office of General Counsel, Commander-in-Chief, U.S. Naval Forces Europe is part of the Office of General Counsel, Department of the Navy. See *id.* § 700.203(g) (describing the authority and responsibilities of the General Counsel of the Navy). The general counsel of the Navy is the principal legal advisor to the secretary of the Navy. *Id.* In contrast to the Army and the Air Force (where general counsel offices are relatively small and located only in the Pentagon), the Navy general counsel has attorneys assigned worldwide. This is largely due to the Navy general counsel being the sole provider of legal advice to the Navy in the areas of contract, commercial, environmental, patent, and real estate law. Consequently, senior Navy commanders frequently receive legal advice from both a military judge advocate and a civilian attorney from the Office of the General Counsel. See generally Kurt A. Johnson, *Military Department General Counsel as "Chief Legal Officers": Impact on Delivery of Impartial Legal Advice at Headquarters and in the Field*, 139 MIL L. REV. 1, 16-21, 52-54, 70-73 (1993) (outlining the division of responsibilities between the Navy's Office of General Counsel and the Navy Judge Advocate General's Corps).

9. MINISTRY OF FOREIGN AFFAIRS, AMBASCIATE ESTERE, MISSIONI SPECIALI E ORGANIZZAZIONI INTERNAZIONALI IN ITALIA [FOREIGN AMBASSADORS, SPECIAL MISSIONS, AND INTERNATIONAL ORGANIZATIONS IN ITALY] 236 (1992). See generally Vienna Convention on Diplomatic Relations, 18 Apr. 1961, 22 U.S.T. 3227, 500 U.N.T.S. 95 (defining "diplomatic agents" and the privileges and immunities accorded to them and their immediate family members).

U.S. Embassy) as the office responsible for matters arising under the NATO SOFA. As part of the diplomatic mission, the ambassador influences the scope and nature of the USSSO's activities.¹⁰

Missions

One of the USSSO's continuing primary missions is to administer and to supervise U.S. responsibilities under the NATO SOFA regarding foreign criminal jurisdiction¹¹ and claims¹² matters. The USSSO's diplomatic status gives it the authority¹³ and the responsibility to deal directly with the various ministries of the Italian government on behalf of U.S.

forces regarding passports and visas,¹⁴ taxation,¹⁵ customs,¹⁶ and host nation labor issues¹⁷ arising under the NATO SOFA. Because of the USSSO's diplomatic status, it also performs the following missions: U.S. country representative, Italy (foreign criminal jurisdiction); single-service claims responsibility for Italy; U.S. country representative (foreign tax relief);¹⁸ liaison officer for local labor and wage rate matters;¹⁹ civil law legal advisor to the ambassador and diplomatic mission;²⁰ legal advisor to the Office of Defense Cooperation-Rome;²¹ the EUCOM legal representative for Italy; and civil litigation liaison officer to the U.S. Department of Justice.²²

Its missions require the USSSO's attorneys to deal frequently with the Italian Ministry of Defense, the Ministry of

10. See 22 U.S.C. § 3927 (1994). See also National Security Decision Directive 38, *Staffing at Diplomatic Missions and Their Constituent Posts* (June 2, 1982) (on file with author).

11. See NATO SOFA, *supra* note 5, art. VII. The USSSO's officer-in-charge, through delegation from the EUCOM, is the single point of contact with the Italian national authorities for foreign criminal jurisdiction matters. See U.S. DEP'T OF DEFENSE, DIR. 5521.1, STATUS OF FORCES POLICIES AND INFORMATION (3 Nov. 1955). Current guidance on Article VII foreign criminal jurisdiction matters arising in Italy is set out in several references. See, e.g., U.S. DEP'T OF DEFENSE, DIR. 5525.1, STATUS OF FORCES POLICIES AND INFORMATION (7 Aug. 1979) (C1, 9 Apr. 1985); U.S. DEP'T OF ARMY, REG. 27-50, STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION (15 Dec. 1989) [hereinafter AR 27-50]; U.S. DEP'T OF AIR FORCE, REG. 110-12, STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION (15 Dec. 1989); U.S. DEP'T OF NAVY, INSTR. 5820.4G, STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION (15 Dec. 1989); U.S. DEP'T OF NAVY, EUROPEAN COMMAND DIR. 45-3, FOREIGN CRIMINAL JURISDICTION OVER U.S. PERSONNEL (2 Feb. 1994).

12. See NATO SOFA, *supra* note 5, art. VIII. In July 1956, the Commander, Naval Forces Eastern Atlantic and Mediterranean Command, designated the USSSO's officer-in-charge as the officer responsible for the administration of claims arising in Italy under the NATO SOFA, Article VIII. See also U.S. SENDING STATE OFFICE FOR ITALY, INSTR. 5800.1I, PROCEDURES FOR PROCESSING CLAIMS WITHIN THE SINGLE-SERVICE RESPONSIBILITY OF THE U.S. NAVY (27 Oct. 1997) (containing guidance for processing NATO SOFA claims in Italy). In Italy, all NATO SOFA claims are filed with the Italian Ministry of Defense in Rome. *Id.* at para. 7. Neither the USSSO nor any U.S. military claims office in Italy can approve or disapprove "official duty" claims cognizable under the NATO SOFA, Article VIII, paragraph 5. The responsibility for receipt, investigation, and disposition of such claims rests with Italy, as the receiving state. The USSSO coordinates with base legal offices for the collection and transmittal of formal investigation reports to the Italian Ministry of Defense. Under the NATO SOFA, Article VIII, paragraphs 5(e) and 5(i), the U.S. Navy, through the USSSO, reimburses the Ministry of Defense for 75 percent of the amount paid in settlement of such claims. See 10 U.S.C. § 2734a (1994) (granting authority for the Department of Defense to pay a pro-rata share of official duty claims made pursuant to international agreements). In contrast, the USSSO adjudicates *ex-gratia* claims arising out of acts or omissions not done in the performance of official duty and cognizable under the NATO SOFA, Article VIII, paragraph 6. Such claims are first filed with the Ministry of Defense and are then transferred to the USSSO for adjudication by the U.S. Navy Foreign Claims Commission, with settlements paid from Navy funds.

The Navy also has single-service claims authority for claims arising in Italy that are cognizable under the Military Claims Act, 10 U.S.C. § 2733; the Foreign Claims Act, 10 U.S.C. § 2734; the Medical Care Recovery Act, 42 U.S.C. §§ 2651-53; and the Nonscope Claims Act, 10 U.S.C. § 2737. U.S. DEP'T OF DEFENSE, DIR. 5515.8, SINGLE SERVICE ASSIGNMENTS FOR PROCESSING OF CLAIMS, paras. D(2)(a), A(2) (9 June 1990). The Judge Advocate General of the Navy has delegated various levels of settlement and denial authority for such claims to the USSSO. See, e.g., U.S. DEP'T OF NAVY, JAG INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL, para. 0818 (9 Oct. 1990) (NATO SOFA *ex-gratia* claims adjudicated by U.S. Navy Foreign Claims Commissions); U.S. DEP'T OF NAVY, JAG INSTR. 5890.1, ADMINISTRATIVE PROCESSING AND CONSIDERATION OF CLAIMS ON BEHALF OF AND AGAINST THE UNITED STATES, encl. 2, para. 9 (17 Jan. 1991). Additionally, the USSSO collects from third-party payers for health care services incurred in Italy on behalf of persons entitled to medical care in Department of Defense medical facilities. See *generally* 10 U.S.C. § 1095 (1994); 42 U.S.C. §§ 2651-53 (1994); U.S. DEP'T OF DEFENSE, INSTR. 6010.15, THIRD-PARTY COLLECTION PROGRAM (10 Mar. 1993).

13. See *generally* 18 U.S.C. § 953 (1994) (limiting who may communicate with a foreign government on behalf of the United States).

14. See NATO SOFA, *supra* note 5, art. III.

15. See *id.* arts. IX, X.

16. See *id.* arts. IX, XI.

17. See *id.* art. IX, para. 4.

18. See U.S. DEP'T OF DEFENSE, DIR. 5100.64, DOD FOREIGN TAX RELIEF PROGRAM (12 June 1979) (codified at 32 C.F.R. pt. 211 (1996)). See also U.S. EUROPEAN COMMAND, DIR. 45-8, FOREIGN TAX RELIEF PROGRAM (2 Feb. 1994) (implementing the Department of Defense Foreign Tax Relief Program in the EUCOM area of operations and making the commander-in-chief, U.S. Naval Forces Europe, responsible for administration of the program in Italy).

19. See U.S. EUROPEAN COMMAND, DIR. 30-6, LOCAL NATIONAL PERSONNEL (21 May 1984) (designating the commander-in-chief, U.S. Naval Forces Europe, as the coordinating officer for all local wage rate and local national personnel matters involving U.S. forces in Italy). The officer-in-charge, USSSO, is the designated liaison officer on host nation labor law matters with both U.S. embassy officials and officials of the Italian government.

Grace and Justice, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Labor, and the Ministry of Finance. While the USSSO accomplishes most coordination by telephone or in writing, USSSO attorneys regularly hold meetings with senior ministry officials who are directly responsible for issues affecting U.S. forces. Attorneys also coordinate informally at diplomatic functions sponsored by both governments.

The Increasing Importance of American-Italian Military Relations

Italy is a vital ally of the United States, as Secretary of State Albright emphasized in February 1997 when she made Italy the first stop on her first official overseas trip as the Secretary of State. Italy is a significant economic power²³ and is also an important military ally of the United States. Italy continues to make critical contributions to NATO and to international peacekeeping and peacemaking operations.²⁴

The Italian Military

During 1996, Italy had approximately 322,000 active-duty military personnel. Of the total active duty personnel, 185,000 were draftees.²⁵ The primary mission of the Italian military is to provide for the territorial defense of Italy and its NATO allies.

Over the years, Italy has also taken an increasingly active role in peacekeeping and peacemaking operations, with a strong record of success.²⁶ As of December 1996, Italy supplied approximately 2500 service members to ongoing peacekeeping and peacemaking missions, including: NATO peacemaking operations in the former Yugoslavia; several United Nations peacekeeping missions (primarily in the Middle East and Southwest Asia); and the multinational force and observers peacekeeping mission in the Sinai.²⁷

In April 1997, despite strong internal political opposition,²⁸ Italy led a multinational European peacekeeping force into Albania for *Operazione Alba* (Operation Sunrise).²⁹ Acting without direct United States participation, but with the benefit of a United Nations Security Council mandate to protect humanitarian relief efforts, Italy initially committed 2500 military personnel to the operation. Italy then obtained force

20. The officer-in-charge, USSSO, is a member of the ambassador's "country team." As a result, the ambassador and his principal staff frequently request opinions from the USSSO on United States and Italian civil law matters, international law issues, and ethics. The USSSO also participates in Department of State contingency and disaster relief planning and exercises. The country team is the principal advisory body to the chief of a diplomatic mission. See Robert O. Neumann, *The Organization of a Diplomatic Mission*, reprinted in THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. AIR FORCE, INTERNATIONAL LAW COURSE DESKBOOK II-41 through II-58 (June 1996); INTERNATIONAL AND OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK app. E (1996) [hereinafter JA 422] (summarizing the composition of a typical United States diplomatic mission and discussing the country team concept). See also Marc L. Warren, *Operational Law—A Concept Matures*, 152 MIL. L. REV. 33, 45-46 n.51 (1996) (discussing the country team in the context of contingency operations).

21. The chief of the Office of Defense Cooperation-Rome (ODC-Rome) serves as the U.S. defense representative to Italy on behalf of the Secretary of Defense and the commander-in-chief, EUCOM. See U.S. DEP'T OF DEFENSE, DIR. 5105.47, U.S. DEFENSE REPRESENTATIVE (USDR) IN FOREIGN COUNTRIES (20 Sept. 1991) (C1, 20 Jan. 1992) (establishing principal responsibilities of USDRs); U.S. EUROPEAN COMMAND, DIR. 56-9, PROCEDURES FOR THE U.S. DEFENSE REPRESENTATIVE (25 June 1996) (listing EUCOM USDRs and identifying their principal responsibilities). The ODC-Rome has primary responsibility for host nation logistical support, infrastructure, security assistance, and the Defense Cooperative Armaments program. The ODC-Rome is a EUCOM asset, and its chief reports to the EUCOM J-4. Unlike other diplomatic missions where judge advocates are assigned or attached to the local security assistance organization or defense attaché's office, the USSSO's attorneys are neither assigned nor attached to ODC-Rome or to the Office of the Defense Attaché.

22. Personnel from the USSSO usually coordinate with the Chief, Department of Justice Civil Division European Office. That office, which was previously located at the American Consulate in Munich, is now located at the American Embassy in London. The USSSO also coordinates with the Director, Department of Justice Civil Division Office of Foreign Litigation, located in Washington, DC. As the only legal office in Italy with tri-service and country-wide responsibilities, the USSSO monitors all civil litigation in the Italian courts that involves host nation labor, tax, customs, assertions of U.S. sovereign immunity, and environmental enforcement actions.

23. Italy has the world's fifth largest economy and is a member of the G-7 economic group. U.S. DEP'T OF STATE, 1995 BACKGROUND NOTES-ITALY 3 (1995).

24. In May 1996, the center-left *Ulivo* (Olive Tree) coalition government, led by Prime Minister Romano Prodi, took power. Although the coalition's largest component is the New Democratic Party of the Left, an offshoot of the former Communist Party of Italy, the Prodi government has continued Italy's long-standing commitment to NATO and to bilateral military cooperation with the United States.

25. Daniele Martini, *Difesa* [Defense], PANORAMA, 20 Mar. 1997, at 77.

26. A more tempered view was recently set out in THE ECONOMIST:

As peacekeepers, Italians have been rather successful. Their soldiers have often been charming. Their politicians' gift for compromise and wheeler-dealing has sometimes worked. Italians did well in Somalia—until things went badly. They have helped calm things in Bosnia. They may, with luck, help in Albania too. Negotiations with Albania's home-grown *mafiosi*, as well as local warlords, are already hectic.

A Naughty New Bit of Nationalism, ECONOMIST, Apr. 19, 1997, at 50.

27. Message, 031704Z Dec 96, American Embassy, Rome, subject: Update on Italian Participation in Out-of-Country Military Operations (3 Dec. 1996).

commitments from France, Spain, Greece, Denmark, Romania, Turkey, and Austria to create a total combined force of approximately 6000 military personnel.³⁰ *Operazione Alba* was a success. The Italian-led force provided security for humanitarian assistance operations; helped to restore public order throughout the country; and provided security for national elections, which took place in June 1997.

America's Military Presence in Italy

One of Italy's most significant contributions to NATO is its continued agreement to allow U.S. military forces to be stationed in Italy.³¹ In 1996, Italy hosted approximately 14,000 permanently assigned U.S. military personnel at eighteen installations and five NATO headquarters. An average of an additional 15,000 U.S. military personnel were deployed with the U.S. Sixth Fleet, headquartered in Gaeta. Most U.S. forces in Italy are currently located at Aviano Air Base, Aviano;³² Caserma Ederle, Vicenza; Camp Darby and Leghorn Army Depot, Livorno; Naval Support Activity, Gaeta; Naval Support Activity, Naples; Naval Support Activity, La Maddalena (Sardinia); and Naval Air Station, Sigonella (Sicily). Although some U.S. units in Italy have been deactivated or restructured, the total number of permanently assigned U.S. military personnel has remained relatively constant since the mid-1980s.

Italy is an ideal staging ground for operations throughout the EUCOM's southern area of operations. During Operations Desert Shield and Desert Storm, personnel from United States and NATO facilities in Italy provided significant logistical support. More recently, Aviano Air Base; Naval Air Station,

Sigonella; and U.S. Navy facilities in Naples have played extensive roles in supporting United Nations and NATO operations in the former Yugoslavia. Currently, numerous U.S. military personnel are temporarily assigned to Italy in support of operations in the former Yugoslavia.

Significant Legal Issues

A large portion of the USSSO's work involves foreign criminal jurisdiction³³ and claims³⁴ issues, but the its legal practice is beginning to focus more on international law, administrative law, foreign civil litigation, and the monitoring of new developments in Italian jurisprudence. The USSSO is also involved in formulating, monitoring, and interpreting policies which are applicable to U.S. forces in Italy. Its involvement in policy is particularly important because the USSSO helps to ensure the consistent application of policies for all branches of the U.S. military throughout Italy.

Because the USSSO has diverse legal and diplomatic responsibilities, its personnel work on a wide variety of issues. The legal issues discussed in this article provide a sample of the USSSO's practice.

Shell Agreement/Base Technical Arrangements

Except for facilities the United States leases from private entities,³⁵ all U.S. military operations in Italy are located on Italian or NATO military installations. Most of the almost 250 bilateral military agreements and technical arrangements

28. *Italy's Buffeted Survivor*, *ECONOMIST*, Apr. 19, 1997, at 49-50 (summarizing objections to *Operazione Alba* that were made by a major political party and several cabinet ministers).

29. The Albanian government effectively collapsed in March 1997 after several large fraudulent "pyramid" investment schemes failed. Violence and civil disorder spread throughout the country, causing over 13,000 Albanians to flee to Italy. Robert Graham, *Italy Paves the Way to Lead Albania Mission*, *FIN. TIMES*, Apr. 3, 1997.

30. *Id.*

31. The continued U.S. presence in Italy occasionally results in calls by some Italian journalists and government officials for review and possible renegotiation of Italy-U.S. bilateral defense agreements and closer supervision of U.S. activities in Italy. For example, the author of a recent article in a leading Italian weekly magazine referred to unilateral reductions by other NATO countries which were imposed on United States military operations, and the author called for a comprehensive examination of U.S.-Italy bilateral defense agreements. Maurizio Molinari, *Italia e USA, Fine Della Diplomazia Segreta [Italy and USA, End of Secret Diplomacy]*, *PAN-ORAMA*, Nov. 28, 1996, at 32.

32. Italy's commitment to United States operations in support of NATO was highlighted in 1988 when the 401st Tactical Fighter Wing, an Air Force F-16 fighter unit, was required to leave Torrejon, Spain, pursuant to a bilateral defense agreement between Spain and the United States. Italy first agreed to temporarily base the 401st at a civilian airport in Crotone, Calabria, pending completion of a new NATO airbase at Crotone. In 1992, after cancellation of the Crotone project, Italy agreed to a NATO request for the 401st to remain in Italy. A 1993 agreement between the United States and Italy allowed the 401st (now the 31st Fighter Wing) to be based at Aviano Air Base. Had Italy not allowed the 401st to remain in Italy, the unit would have been returned to the United States, and there would probably now be no United States F-16 units permanently stationed in Europe.

33. In fiscal year 1996, there were 158 new concurrent jurisdiction cases opened. Of those cases, 28 were disposed of through assertion of U.S. primary jurisdiction, and 89 were disposed of through a waiver by the Ministry of Grace and Justice of Italy's right of primary jurisdiction.

34. In 1996, the USSSO took final action on 82 claims under the Military Claims Act, with total payments of \$78,627. The USSSO also recovered \$194,505 in affirmative medical care and property damage claims. Additionally, the Italian Ministry of Defense paid 158 claims in 1995 under Article VII, paragraph 5 of the NATO SOFA ("official duty" claims), totaling approximately \$886,000. In 1996, the USSSO took final action on 16 *ex gratia* claims under Article VII, paragraph 6 of the NATO SOFA, with total payments of \$32,481.

between the United States and Italy since 1946 have dealt with U.S. operations on Italian military bases.³⁶

In 1991, the Italian Defense General Staff (IDGS) requested negotiations with the United States concerning the establishment of a model technical arrangement regarding the United States use of Italian military installations and the return of U.S. infrastructure on those installations to Italy. The IDGS wanted to standardize and to update the existing base technical arrangements.³⁷ The Department of Defense designated the EUCOM as the executive agent for the negotiations,³⁸ and the EUCOM was represented in part by USSSO attorneys.

In June 1991, the IDGS presented its first draft of a proposed memorandum of understanding. The United States presented its counterproposal in December 1991. The negotiations culminated in 1995 when the parties entered into the Shell Agreement,³⁹ a comprehensive basing agreement consisting of a memorandum of understanding and two model annexes.

Annex A of the Shell Agreement, the “Model Technical Arrangement on Implementing Procedures Between the United States Department of Defense and the Italian Ministry of Defense Concerning Use of Installations and/or Infrastructure,” is the model for all future base technical arrangements regarding the operation and presence of U.S. forces on Italian installations.⁴⁰ The topics in Annex A include: command relationships,⁴¹ police powers on the installation and base security responsibilities,⁴² coordination for training and operational activities,⁴³ customs and taxation,⁴⁴ financial matters,⁴⁵ and procedures for mutual cooperation among local commanders.⁴⁶ Annex A is significant because it is a recognition by the Italian government that U.S. forces may operate facilities which are “necessary to support the force, civilian component, and dependents,” to include APOs/FPOs, exchanges, commissaries, military banking facilities, DODDS schools, child care centers, and medical and dental care facilities.⁴⁷ Annex A is also a recognition that U.S. “civilian personnel” will be treated substantially the same as members of the “civilian component.”⁴⁸

35. For example, the future Naval Support Site (NSS) at Gricignano di Aversa is being privately constructed under a build-to-lease contract as part of the Naples improvement initiative. The Navy will lease the NSS for 30 years, with an option for renewal. Upon completion, the NSS will contain two schools, a commissary, a Navy base exchange, a Navy hospital, officer and enlisted family housing, and numerous community support facilities. The Navy will vacate current leased facilities at Agnano in Naples, and operations will move to the NSS and to U.S. facilities located on the Italian military portion of Naples’ Capodichino Airport.

36. Although there are numerous Italy-United States bilateral defense-related agreements, there is no comprehensive supplemental agreement to the NATO SOFA similar to that which currently exists between several NATO countries and Germany. See Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces with Respect to Foreign Forces Stationed in the Federal Republic of Germany, Aug. 3, 1959, 1 U.S.T. 531, 481 U.N.T.S. 262 [hereinafter Supplemental Agreement]. In 1993, the parties amended the agreement between Germany and its sending states. Wes Erikson, *Highlights of the Amendments to the Supplementary Agreement*, ARMY LAW., 3, 14 (Dec. 1993).

The lack of a comprehensive supplemental agreement with Italy has the greatest impact on foreign criminal jurisdiction matters. In Germany, Article 19 of the supplemental agreement provides that all sending state requests for Germany to waive its primary right of jurisdiction in concurrent jurisdiction cases are automatically granted, subject to Germany’s right of recall. Supplemental Agreement, Art. 19. In Italy, each waiver request is decided by the Ministry of Grace and Justice on a case-by-case basis after local prosecutors and the Ministry of Foreign Affairs make their recommendations. After a waiver request is submitted to the local prosecutor, it usually takes six to twelve months for final action by the Ministry of Grace and Justice.

37. An additional motivating factor may have been a desire by the Italian government to monitor and to control more closely U.S. military activities in Italy. For example, in 1985, without prior coordination with the Italian government, several F-14 fighters from the aircraft carrier USS Saratoga intercepted an Egypt Air flight over the Mediterranean Sea and forced the jetliner to land at Naval Air Station-Sigonella. On the plane were the four Palestinian coconspirators who had hijacked the Italian cruise ship *Achille Lauro* and murdered an American citizen, Leon Klinghoffer. After landing, the Palestinians were taken into U.S. custody for transfer to the United States. The Italian government denied permission for the transfer and requested transfer of the Palestinians to Italian custody. All four were later convicted in Italian courts for murder.

38. See generally 1 U.S.C. § 112b (1994); 22 C.F.R. pt. 181 (1996) (containing the Department of State regulation on the coordination, review, reporting, and publication of international agreements); U.S. DEP’T OF DEFENSE, DIR. 5530.3, INTERNATIONAL AGREEMENTS (11 June 1987); U.S. DEP’T OF ARMY, REG. 550-51, AUTHORITY AND RESPONSIBILITY FOR NEGOTIATING, CONCLUDING, FORWARDING, AND DISPOSITION OF INTERNATIONAL AGREEMENTS (1 May 1995); U.S. EUROPEAN COMMAND, DIR. 5-13, INTERNATIONAL AGREEMENTS—AUTHORITIES AND RESPONSIBILITIES (27 Jan. 1994). See also JA 422, *supra* note 20, ch. 3 (providing a summary of the international agreement formulation and approval process).

39. Memorandum of Understanding Between the Ministry of Defense of the Republic of Italy and the Department of Defense of the United States of America Concerning Use of Installations/Infrastructure by U.S. Forces in Italy, Feb. 2, 1995, U.S.-Italy, 1995 WL 149275 (Treaty).

40. See *id.* annex B (concerning the return of infrastructure and the computation of residual value should U.S. forces vacate an installation).

41. *Id.* annex A, sec. VI.

42. *Id.* annex A sec. XV.

43. *Id.* annex A, sec. XVII.

44. *Id.* annex A, sec. XIII.

45. *Id.* annex A, secs. XII and XIV.

Since 1995, with USSSO attorneys participating in all bilateral negotiating sessions, the IDGS and the United States have entered into negotiations for base technical arrangements for each Italian installation used by U.S. forces. To date, the United States has presented five draft technical arrangements to the IDGS. Negotiators are currently working toward the completion of a consolidated technical arrangement covering all U.S. military facilities in Sicily (to include Naval Air Station, Sigonella), and they expect that all other base technical arrangements will be concluded soon thereafter.⁴⁹ For the Army, the United States will enter into separate technical arrangements for Caserma Ederle (and its surrounding installations in Vicenza) and Camp Darby (and its surrounding installations near Livorno).

*Italian Labor Law*⁵⁰

United States forces in Italy obtain all local national labor through direct hire.⁵¹ Article IX, paragraph 4 of the NATO SOFA requires the United States to follow host nation labor law for its local national employees.⁵² In Italy, the NATO SOFA, along with the 1957 Joint Policy Statement,⁵³ effectively waives the sovereign immunity of the United States as to suits brought by local national employees in Italian courts for alleged violations of Italian labor laws.⁵⁴

Presently, the Italian courts have more than 130 active labor cases that have been brought by current or former employees of the U.S. forces in Italy. The present exposure for the United States is approximately \$100,000,000.⁵⁵ While most of these cases arose from classification or disciplinary actions, some involve challenges to contracts between the United States and third party contractors for the performance of certain base

46. The Shell Agreement calls for the establishment of a standing joint military commission (JMC) to resolve issues in the interpretation and implementation of the Shell Agreement and individual base technical arrangements which cannot be resolved at the local level. *Id.* art. II. The JMC has not been implemented. There is also a provision which allows the Italian base commander and the senior U.S. commander at an Italian installation to establish a local standing joint committee to facilitate the resolution of problems and disputes arising at the local level after entry into an installation technical arrangement. *Id.* annex A, sec. XIX. No joint committees yet exist. Nonetheless, Italian and U.S. commanders have traditionally had excellent working relationships, and most operational problems have been resolved at the local level.

47. *Id.* annex A, sec. XIV.

48. The term "civilian personnel" includes the "civilian component" of a force and others, such as:

Employees of other United States departments;

Essential employees of the USO, schools, post exchanges, commissaries, credit unions, and Red Cross; and

Technical representatives of firms having special relations with the United States Armed Forces, when such persons come into Italy for other than temporary visits.

Id. annex A, sec. IV. Civilian personnel are treated as members of the civilian component to the extent permitted by the legislation of both parties, thereby providing authorization for logistical support to be provided to U.S. civilian personnel who are not members of the civilian component. Unlike the North Atlantic Treaty and the NATO SOFA, the Shell Agreement has not been ratified into positive law by the Italian Parliament.

49. See, e.g., JOHN WOODLIFE, *THE PEACETIME USE OF FOREIGN MILITARY INSTALLATIONS UNDER MODERN INTERNATIONAL LAW* (1992); Richard J. Erickson, *Status of Forces Agreements: A Sharing of Sovereign Prerogative*, 37 A.F.L. REV. 137 (1994); Rafael A. Porrata-Doria, Jr., *The Philippine Bases and Status of Forces Agreement: Lessons for the Future*, 137 MIL. L. REV. 67 (1992); Mark D. Welton, *The NATO Stationing Agreements in the Federal Republic of Germany: Old Law and New Politics*, 122 MIL. L. REV. 77 (1988). These works provide further insights into the negotiation, operation, and termination of base stationing agreements and SOFAs. See also JA 422, *supra* note 20, ch. 3 (discussing basing agreements and SOFAs in contingency operations).

50. As used herein, the phrase "Italian labor law" encompasses a wide range of subjects, including, but not limited to, local national employee hiring and separation actions, classification and disciplinary actions, determination of employee pay and benefits, protection of employees from occupational and environmental hazards, recognition of employee labor unions, and collective bargaining with recognized unions. A comprehensive examination of current Italian labor law issues facing U.S. forces is beyond the scope of this article.

51. See generally U.S. DEP'T OF DEFENSE, INSTR. 1400.10, EMPLOYMENT OF FOREIGN NATIONALS IN FOREIGN AREAS, para. 2 (5 Dec. 1980) (C1, 22 Dec. 1980) (comparing direct and indirect hiring systems) [hereinafter DOD INSTR. 1400.10].

52. But see *id.*, para. 1(a) (requiring U.S. forces to follow local labor laws, practices, and customs in the employment of foreign nationals in foreign countries, so long as the laws, practices, and customs are not in conflict with U.S. law and are compatible with the "basic management needs" of the U.S. forces).

53. The parties to the JPS were the EUCOM and the Italian Ministry of Labor.

54. Service of process on the United States in foreign civil actions must be completed in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163. Article 2 of this convention designates the Department of Justice as the central authority for service of process on the United States in all civil actions in foreign courts in which the United States is the named party defendant.

55. Plaintiffs are not required to state a sum certain claimed when initiating civil actions in Italian courts. Consequently, it is possible to give only an estimate of United States exposure in pending Italian civil litigation arising out of the activities of U.S. forces. To help the Department of Justice and base attorneys to monitor pending civil litigation involving U.S. forces, the USSSO developed a computerized case tracking system which summarizes the status of all civil litigation in Italy. The first summary was distributed in the fall of 1996.

operation functions.⁵⁶ As with other types of civil litigation against the United States in Italy, Italian labor cases carry the additional risk that institutional property of the U.S. forces may be attached.⁵⁷

The USSSO, in conjunction with base labor counselors and the Department of Justice Office of Foreign Litigation, monitors ongoing labor litigation and new developments in Italian labor law. The USSSO also provides legal advice and guidance to base legal offices to help reduce future litigation risks. Two current critical preventive labor law issues are eligibility for civilian component status and compliance with Italian occupational safety laws.

Ordinarily Resident/Dual Nationals

One area with which USSSO attorneys and base labor counselors have dealt extensively over the last several years is dual U.S.-Italian nationals⁵⁸ and persons who are ordinarily resident in Italy.⁵⁹ Some dual nationals and persons who were ordinarily resident at the time of hiring now work in the U.S. civilian component, in violation of the NATO SOFA.⁶⁰ Because Italian labor courts take jurisdiction in suits brought by Italian nationals and residents, some dual nationals and ordinarily resident personnel who were inadvertently hired into the civilian component have successfully challenged adverse classification and disciplinary actions in Italian labor courts.⁶¹

The USSSO, the Department of Justice, base legal offices, and the Civilian Personnel Coordinating Committee⁶² are working together to formulate policies regarding dual nationals and ordinarily resident personnel who were inadvertently hired

56. See Law No. 1369 of Oct. 23, 1960, 1960 Gazz. Uff. No. 288, art. I, para. 1, Nov. 25, 1960 [hereinafter Law 1369/60] (prohibiting an entity from contracting or subcontracting out "the mere performance of work through the employment of personnel hired and paid for by the contractor"). One of the potential consequences of violating Law 1369/60 is that the contractor's employees will be deemed to be employees of the contracting entity, and the contracting entity would face potential exposure for back pay and allowances that the contractor's employees would have received for their work if they had been hired as employees of the contracting entity. The Italian Supreme Court has held that U.S. forces are subject to Law 1369/60. *Castagna v. United States*, Cass., 1979, n. 3829, Giur. It.

57. Italian law had protected all property owned by sovereign nations from Italian judicial seizures, unless such seizures were explicitly approved in advance by the Minister of Justice (now titled the Minister of Grace and Justice). Royal Decree 1621 of Aug. 30, 1925, 1925 Gazz. Uff. No. 223, Sept. 25, 1925. The Italian Constitutional Court, however has held these provisions unconstitutional. *Corte cost.*, July 15, 1992, n.329. Soon after this opinion was issued, there were numerous judicial seizures of United States tangible and intangible military property, including naval vessels, office equipment, and bank accounts. The frequency of seizures has decreased in recent years, in part due to U.S. forces moving most appropriated and nonappropriated fund bank accounts to Germany.

58. Italian citizenship law underwent a major change in 1992, causing some members of the civilian component to become Italian citizens even though they had taken no active steps to acquire Italian citizenship. Under the earlier citizenship law, Law No. 555 of June 13, 1912, persons could not hold dual citizenship and lost Italian citizenship upon obtaining citizenship in another country. The change in the law, however, specifically allows dual citizenship. Law No. 91 of Feb. 5, 1992, 1992 Gazz. Uff. No. 38, Feb. 15, 1992. People who previously renounced their Italian citizenship or who had taken citizenship in another country reacquired Italian citizenship by operation of law after residing in Italy for one year. *Id.*

59. The NATO SOFA and the bilateral agreements between the United States and Italy do not define "ordinarily resident." Regulatory guidance establishes the following criteria for determining whether a person is ordinarily resident: (1) registration as a permanent resident in the town of residence; (2) application for and/or issuance of an Italian work permit (a document all Italian nationals are required to have to work in Italy), or Italian *soggiorno* work permit (a permit allowing foreign nationals to work in Italy) for other than employment with U.S. forces; (3) payment of Italian income taxes; or (4) continuous physical residence in Italy, without affiliation with U.S. forces, for at least 180 days prior to employment in the civilian component. See U.S. ARMY EUROPE, REG. 550-32, REGULATION ON PERSONAL PROPERTY, RATIONED GOODS, MOTOR VEHICLES, CIVILIAN COMPONENT STATUS, AND ACCESS TO FACILITIES BY ITALIAN LABOR INSPECTORS, para. 20 (20 Sept. 1995); COMMANDER IN CHIEF, U.S. NAVY FORCES EUROPE, INSTR. 5840.2C, REGULATION ON PERSONAL PROPERTY, RATIONED GOODS, MOTOR VEHICLES, CIVILIAN COMPONENT STATUS, AND ACCESS TO FACILITIES BY ITALIAN LABOR INSPECTORS, para. 20 (20 Sept. 1995); U.S. AIR FORCE EUROPE, INSTR. 36-101, REGULATION ON PERSONAL PROPERTY, RATIONED GOODS, MOTOR VEHICLES, CIVILIAN COMPONENT STATUS, AND ACCESS TO FACILITIES BY ITALIAN LABOR INSPECTORS, para. 20 (20 Sept. 1995).

60. See NATO SOFA, *supra* note 5, art. I, para. 1(b) (defining "civilian component" to exclude persons who are nationals of, or are ordinarily resident in, the receiving state); *id.* art. IX, para. 4 (prohibiting persons hired as local national civilian labor from being treated as members of the force or civilian component). Since 1995, the USSSO has reviewed all applications for issuance or renewal of official and no-fee passports for all people who seek employment with, or who are already working in, the U.S. civilian component or as U.S. civilian personnel. These reviews help to ensure that dual nationals and persons who are ordinarily resident do not receive civilian component or civilian personnel status. If the USSSO refuses to certify an individual's status, the Department of State will not issue or renew an official or no-fee passport for that person to work with U.S. forces. The USSSO conducts similar reviews for individuals who are employed by entities other than the U.S. government (e.g., technical representatives, employees of USO and the Red Cross, etc.) who wish to be classified as civilian personnel in order to obtain logistical support from U.S. forces. Non-U.S. government employees who are dual nationals or ordinarily resident persons cannot have the required "NATO SOFA" endorsement placed on their tourist passports.

61. Several factors encourage eligible civilian component personnel to seek redress in Italian labor courts instead of through available U.S. judicial or administrative remedies. First, Italian labor courts will apply Italian labor law—a complex amalgam of constitutional provisions, statutes, legislative decrees, and court decisions, all of which are based on the philosophy that the state exists in part to protect and to promote the rights of Italian workers. See, e.g., *Cost.*, art. I, para. 1 (Italian Constitution) ("Italy is a democratic Republic founded on labor."); *id.* art. 35, para. 1 ("The Republic safeguards labor in all its forms and methods of execution."). Second, favorable judgments usually result in the award of back pay, interest (currently 10%), money reevaluation (compensation to the plaintiff for loss of value of credit and losses arising from the defendant's actions), and attorney's fees and court costs. See C.P.C., arts. 92, 150, 429, 1284 (1990) (Italian Code of Civil Procedure). Third, the chances for an employer to prevail in full are small if the action is not dismissed initially on jurisdictional grounds, particularly where the employer failed to comply with notification requirements before imposing adverse disciplinary action. However, one important benefit provided to U.S. forces under Italian labor jurisprudence is that the United States, as a non-entrepreneurial employer, is not required to reinstate employees who are found to have been wrongfully terminated from employment.

into the civilian component.⁶³ To help those dual nationals who wish to renounce their Italian citizenship, thereby enabling them to remain a part of the civilian component, the USSSO convinced the Ministry of Interior to issue a circular letter which allows civilian component dual nationals to renounce their Italian citizenship in Italy instead of having to travel back to the United States as would otherwise be required under Italian law.⁶⁴ An additional benefit of the Ministry of Interior circular letter is a specific recognition of the USSSO's position that members of the U.S. military, members of the civilian component, and dependents (as defined under the NATO SOFA) do not reacquire Italian citizenship by operation of law solely as a result of their physical presence in Italy.

Law 626/94

In 1994, Italy enacted Legislative Decree 626/94.⁶⁵ Commonly referred to as Law 626/94, the decree implements into positive Italian law several European Union occupational health and safety directives which were issued in 1989 and 1990.⁶⁶ Under Law 626/94, employers are required to designate occupational health and safety representatives; to maintain work place accident records; and to comply with technical requirements and standards for protection from carcinogenic, chemical, and biologic compounds. Employers are subject to unannounced occupational health and safety inspections by inspectors from the Ministries of Public Health, Labor, and Industry. Employers who fail to comply with Law 626/94 are subject to fines and imprisonment.

Law 626/94 became effective on 1 January 1997, with no exemptions benefiting the Italian or American militaries. Although Italian installations used by U.S. forces were subject to labor and environmental inspections in the past, Law 626/94 greatly expands the scope and number of potential inspections, and it adds significant new substantive and procedural requirements. Engineering, safety, and personnel specialists are assessing current conditions and will advise commanders on initial corrective actions needed to bring U.S. forces into substantive compliance with Law 626/94. At the same time, the USSSO and the Office of the General Counsel for the Commander-in-Chief, U.S. Naval Forces Europe, are seeking a bilateral agreement which would provide some relief from the requirements of Law 626/94. A similar agreement is already in place in the United Kingdom.⁶⁷ The USSSO is also participating in an effort to develop uniform guidance to facilitate United States compliance with the substantive provisions of Law 626/94.⁶⁸

Customs/Taxation

Traditionally, Italy has exempted U.S. forces from the value-added tax on the cost of goods and services purchased for institutional purposes. The rate of the tax is usually nineteen percent. Additionally, Italy has given U.S. forces complete relief from the usual ten percent duty on personal property entering the country and has allowed rationed tax-free sales of Italian gasoline and motor oil products to U.S. forces

62. See DOD INSTR. 1400.10, *supra* note 51, para. 3 (authorizing the establishment of civilian personnel coordinating committees in countries where U.S. forces employ local national employees).

63. In 1996, representatives of the office of the staff judge advocate, the G-1, and the civilian personnel service center conducted a review for all members of the civilian component. The review was conducted in two phases. First, employees completed questionnaires concerning citizenship and residence status, time and circumstances of employment in the civilian component, property owned in country, taxes paid, and registration on local voting and residence lists. Second, the representatives interviewed each employee. During the interview, the representatives also reviewed each employee's official or no-fee passport and Italian *soggiorno* permits and checked for discrepancies against answers provided in the questionnaires and information contained in personnel files. For employees who were dual nationals of the United States and Italy but were not ordinarily resident at the time of hiring, the representatives provided detailed guidance on the procedures to renounce Italian citizenship. The representatives also provided guidance for employees who needed to obtain official or no-fee passports and Italian *soggiorno* work permits.

64. Circular Letter, Ministry of Interior General Directorate for Administration and Personnel Matters, Citizenship, Special, and Patrimonial Matters Department, Citizenship Division, Protocol Number K/19, Feb. 20, 1997.

65. Legislative Decree 626 of Sept. 19, 1994, 1994 Gazz. Uff. No. 265, Nov. 12, 1994.

66. The European Economic Community is now referred to as the European Union.

67. See An Agreement Between the Health and Safety Executive, the Ministry of Defence and the United States Visiting Forces (USVF) in the United Kingdom, July 1989 (copy on file with the author). The agreement sets out a reasonable balance between the sovereignty and operational interests of the United States and the visiting forces and the sovereignty and health and safety interests of the United Kingdom. The agreement includes prohibitions against unannounced administrative inspections and limitations on host nation enforcement procedures.

68. Under the NATO SOFA, the United States, as the sending state, is required to "respect the law of the receiving state . . . and to take necessary measures to that end." NATO SOFA, *supra* note 5, art. II. Based on customary international law and principles of sovereign immunity, the USSSO has generally interpreted Article II as requiring the United States to comply only with Italian *substantive* law unless a bilateral or multilateral agreement explicitly mandates compliance with Italian *procedural* requirements as well. The USSSO has generally advised that U.S. forces need not submit environmental and labor reports to Italian national and local government agencies using the forms or formats designated by those agencies. For United States installations and infrastructure located on Italian military bases, any such procedural requirements are normally the responsibility of the Italian base commander. For leased facilities, the procedural requirements are normally the responsibility of the landlord.

personnel.⁶⁹ Nonetheless, there are still many problems in the areas of customs and taxation. The problems are mostly due to the continued efforts by regional and local customs and tax officials to go after the perceived “deep pockets” of the United States and its employees.

Customs

Under the NATO SOFA, the United States is entitled to import duty-free into Italy supplies, equipment, and other goods for the exclusive use of the U.S. forces.⁷⁰ A subsequent agreement allows the United States to import goods for resale to authorized members of the U.S. forces, the civilian component, and their dependents.

Despite these agreements, customs disputes arise periodically. The disputes usually arise from a failure to generate and to maintain the necessary records which establish the duty-free nature of the imports and the ultimate disposition of the items.⁷¹ Problems arise most frequently when goods are imported from Germany and Austria, when rationed products are moved between Naples and U.S. bases in Sicily and Sardinia, and when goods are shipped through commercial entities. In most cases, the USSSO coordinates directly with the Ministry of Finance, and these routine customs disputes are quickly resolved. Quick resolution, however, depends upon the provision of documentary evidence which establishes that the goods were imported and distributed for the exclusive use of U.S. forces or for direct resale to individuals who are entitled to logistical support privileges.

In 1995, a new type of customs dispute arose when a customs inspector filed criminal complaints with local law enforcement officials against twelve (later seventeen) civilian component employees at Camp Darby. The complaints alleged

that the employees unlawfully received duty-free/tax-free logistical support. The customs inspector also assessed customs duties and taxes allegedly owed by the employees. The customs inspector based his action on information which suggested that the employees were either dual nationals of the United States and Italy or ordinarily resident in Italy at the time of hiring.

The federal government has funded representation of the employees⁷² in all of the criminal cases and the six civil actions to date which seek the enforcement of administrative customs assessments.⁷³ Criminal charges have been dismissed in approximately one-third of the cases, and attorneys are continuing their efforts to have all of the remaining cases dismissed. The final resolution of all of the administrative customs assessments and the civil enforcement actions is still pending.

Trittico

One long-standing customs controversy was resolved in October 1996 when *trittico* was eliminated. *Trittico* was ostensibly a customs bond,⁷⁴ and U.S. personnel were required to pay annual *trittico* payments to register their privately-owned vehicles with “Allied Forces Italy” (AFI) plates. In 1996, the annual fee per vehicle was Lire 80,000 (approximately \$55.00), with total annual payments in 1995 exceeding \$1,000,000. *Trittico* fees were collected and held by the Automobile Club of Italy (ACI), which had the responsibility to pay customs duties on vehicles which were not exported out of Italy or not otherwise properly accounted for after the departure of the registered owner.⁷⁵

69. Italy has traditionally maintained tight control over gasoline rations, as evidenced in 1996 when the Ministry of Finance rejected a renewed USSSO initiative to allow Italian gasoline ration coupons to be sold in Germany. This position is different from that of the German government, which allows U.S. forces gasoline ration coupons for use in Germany to be sold in any NATO country.

70. NATO SOFA, *supra* note 5, art. XI, para. 4.

71. In Italy, documentation of duty-free status is usually evidenced through AE Forms 302 and 302-1, “Declaration for Goods or Property of or Destined to be the Property of the American Forces.”

72. See 10 U.S.C. § 1037 (1994) (allowing the Department of Defense and the military departments to employ counsel to represent persons subject to the Uniform Code of Military Justice and other persons who are “employed by or accompanying the armed forces . . . outside the United States . . .” before foreign judicial and administrative tribunals). See also AR 27-50, *supra* note 11, paras. 2-3 and 2-4 (setting out the criteria for criminal representation provided to U.S. civilian employees and dependents, at the expense of the Department of Defense, in foreign criminal proceedings). Cf., 28 C.F.R. § 50.15 (1996) (providing the Department of Justice guidelines for representation of U.S. government employees in civil and criminal proceedings).

73. One of the pending civil enforcement actions is against a former member of the civilian component who recently retired in Italy. The action seeks over \$17,000 in foregone customs duties, value added taxes, interest, and non-payment penalties.

74. Members of the force and the civilian component may temporarily import into the receiving state, duty-free, their privately-owned motor vehicles for their personal use while stationed in the receiving state. NATO SOFA, *supra* note 5, art. XI, para. 6. In 1956, the United States and Italy exchanged diplomatic notes which require separate *trittico* for each privately-owned motor vehicle which is temporarily imported duty-free under the NATO SOFA. The intent of the *trittico* is the documentation of the duty-free status of the motor vehicle. The diplomatic notes also provided that *tritticos* would be issued by the Automobile Club of Italy. No other NATO country has ever required a similar system to guarantee payment of foregone customs duties.

75. Payment was required if a POV was stolen, abandoned, or otherwise could not be accounted for at the time the owner left Italy.

In an effort to change *trittico*, the USSSO compiled statistical evidence and presented it to the Ministry of Finance. The statistics established that, on average, only a handful of AFI-plated vehicles were sold to unauthorized buyers, abandoned, or otherwise unaccounted for. The ACI was, therefore, making a substantial annual profit on its *trittico* operations.

In October 1996, after several years of effort by the USSSO, the Ministry of Finance issued a circular letter which eliminated the requirement for U.S. personnel to pay *trittico* fees. *Trittico* has been replaced with a much smaller, one-time charge (currently \$20.00) which must be paid at the time of initial registration. The funds are held by a U.S. nonappropriated fund activity to pay any future customs assessments which may be levied.

Taxation

In 1991, the government of Italy unilaterally abrogated the Dunn-Vanoni Agreement of 5 March 1952,⁷⁶ which granted the United States a complete exemption from numerous specified taxes on goods and services purchased by U.S. forces “for the common defense.” Since the Italian government did not abrogate the agreement under the terms of the agreement itself, the United States has never recognized the unilateral abrogation. Fortunately, most of Dunn-Vanoni’s tax exemptions and preferences have been revived through legislation, regulations, and governmental decrees which were

enacted after the abrogation.⁷⁷ Some local tax officials, however, still attempt to tax goods and services purchased by U.S. forces for official use. Through discussions with the relevant Italian ministries, the USSSO is able to resolve most of these disputes as they arise.⁷⁸

In 1996, there was another troubling development in the tax arena when the Italian social security administration, *Istituto Nazionale della Previdenza Sociale* (INPS), sued the United States in Italian labor court for approximately \$25,000,000. The bases of the suit were the Navy’s alleged failure to pay the full amount of employer social security contributions owed over a number of years and its alleged failure to comply with INPS regulatory reporting requirements which implement tax relief legislation for businesses in southern Italy.⁷⁹

After coordination among the Department of State, the Department of Justice, the Navy, the USSSO, and the embassy’s counselor for labor affairs, the U.S. embassy filed a diplomatic note which invoked the sovereign immunity of the United States⁸⁰ and suggested that the dispute be resolved under Article XVI of the NATO SOFA.⁸¹ The Ministry of Foreign Affairs responded with a diplomatic note which disagreed with the United States position that the dispute was of the type subject to resolution under Article XVI of the NATO SOFA.⁸² Litigation has been stayed at the request of both parties. In the interim, the USSSO is working with the Department of State, the Department of Justice, the Navy, and the embassy’s counselor for labor affairs on a diplomatic solution. The U.S. embassy filed a second diplomatic note which further explained

76. The Dunn-Vanoni Agreement consisted of an exchange of letters between then United States Ambassador Dunn and then Italian Minister of Finance Vanoni. The agreement was never ratified into positive Italian law. In late 1996, the Ministry of Foreign Affairs served notice upon the United States that the government of Italy would unilaterally rescind Dunn-Vanoni within six months. *Nota Verbale* [Diplomatic Note] No. 142, Ministry of Foreign Affairs, Rome, Dec. 24, 1996 (copy on file with author). Repeated attempts by the United States to convince Italy not to carry out its threat failed, and a rescission notice was published in the *Gazzetta Ufficiale* (the Italian equivalent of the Federal Register) in 1991.

77. See, e.g., Law 427 of Oct. 29, 1993, 1993 Gazz. Uff. No. 265, Oct. 29, 1993 (providing relief from several types of taxes to NATO commands and the armed forces of any state which is a contracting party to the North Atlantic Treaty).

78. During the past several years, the USSSO has obtained exemptions for U.S. personnel from the annual television and radio subscription tax and the tax on kerosene and bottled liquefied natural gas. Through the USSSO’s efforts, cellular and mobile telephones used for the official business of U.S. forces are not subject to the cellular telephone subscription tax. With guidance from the USSSO, individual military commands have implemented other important tax relief initiatives. One of these initiatives is a tax-exemption certificate program which allows privately-owned AFI-plated vehicles to be repaired without value-added tax on labor and repair parts. Another initiative is a program for the sale of tax-free heating oil through U.S. nonappropriated fund activities to U.S. service members and civilian personnel who live on the Italian economy.

79. Southern Italy is commonly referred to as the *Mezzogiorno*. Unemployment in the *Mezzogiorno* is substantially higher than in northern Italy.

80. In general, the United States advocates a restrictive theory of sovereign immunity and will assert the defense in foreign courts only to the extent that foreign nations are permitted to assert the defense in United States courts. Erikson, *supra* note 49, at 149, n.36. The Foreign Sovereign Immunities Act of 1976 limits the sovereign immunity defense in United States courts to noncommercial activities of foreign governments and their instrumentalities. 28 U.S.C §§ 1330, 1332, 1391, 1441, 1602-11 (1994). The question of what constitutes a “commercial activity,” thereby precluding assertion of the sovereign immunity defense, has been a subject of continued discussion in the federal courts. See, e.g., Janini v. Kuwait University, 43 F.3d 1534 (D.C. Cir. 1995) (holding that the unilateral termination of an employment contract by Kuwait University due to Iraqi invasion was a commercial activity, despite a formal governmental decree of abrogation); Cicippino v. Islamic Republic of Iran, 30 F.3d 164 (D.C. Cir.) (the Foreign Sovereign Immunities Act does not allow application of the sovereign immunity defense to governmental activities which would also be engaged in by commercial enterprises), *cert. denied*, 513 U.S. 1078 (1994).

81. Diplomatic Note No. 754, Embassy of the United States of America, Rome, Sept. 11, 1996. In the note, the United States took the position that it had only waived its sovereign immunity for labor actions filed by individual employees of the U.S. forces.

82. *Nota Verbale* [Diplomatic Note] No. 588, Ministry of Foreign Affairs, Rome, Oct. 8 1996.

the positions asserted in its first diplomatic note.⁸³ The coordinating offices are also working on jurisdictional and merits defenses, in case the matter can be resolved only in court.

Reform of the Italian Military Justice System

Although the Italian military departments have commissioned attorneys in their ranks, there is no legal corps or regiment in the Italian force structure. Offenses by Italian military personnel are triable by civilian prosecutors who are assigned to the *Procura Generale Militare Della Repubblica* [Office of the General Military Prosecutor of the Republic] (OGMPR).⁸⁴ The offenses are tried in military courts located throughout Italy, but offenses that are committed outside of Italy are tried only in Rome.⁸⁵

As Italy's out-of-country peacekeeping and peacemaking missions began to increase, officials within the Ministry of Defense and the OGMPR sought the USSSO's assistance to better understand the United States military justice system and the role of judge advocates in the U.S. military. The officials were especially interested in two areas: (1) the procedures by which courts-martial are convened and tried outside of the continental United States and (2) the provision of operational law advice to deployed units. The USSSO has provided detailed summaries, both verbally and in writing, of the U.S. military justice system and the role of judge advocates in

deployments. It is expected that the USSSO will continue to provide assistance in this area.

USSSO Support to Base Legal Offices

The USSSO is the only central point of contact for all U.S. forces attorneys in Italy. As the principal legal policy office in Italy, the USSSO is a central clearing house for the exchange of information among all base legal offices in Italy and other legal offices that handle issues which arise in Italy.

In 1995, the USSSO issued a three-volume USSSO Deskbook. The deskbook serves as the initial reference for most Italy-specific legal issues. The deskbook contains copies of the NATO SOFA, the Shell Agreement, the USSSO's foreign criminal jurisdiction⁸⁶ and claims⁸⁷ instructions, the USSSO Country Tax Law Study for Italy, the USSSO Civil Litigation Manual for Italy, and an English translation of the Italian Code of Criminal Procedure. Other sections provide guidance on diverse topics, such as civilian component status, logistical support privileges,⁸⁸ visas⁸⁹ and *soggiorno* permits,⁹⁰ disaster relief, and administration of tax-relief initiatives. The deskbook was distributed to all base legal offices in Italy and to other Department of Defense and Department of Justice offices that handle legal issues which arise in Italy. The USSSO distributes updates annually and when otherwise warranted.

The USSSO regularly issues legal opinions and policy memoranda to the principal legal offices in Italy. It also

83. Diplomatic Note No. 153, Embassy of the United States of America, Rome, Mar. 4, 1997.

84. Attorneys from the OGMPR are the legal advisors to Italian military commanders on military justice matters. Royal Decree No. 1022, Sept. 9, 1941, 1941 *Gazz. Uff.* No. 223, Sept. 27, 1941.

85. See Giuseppe Scandurra, *CONSTITUZIONE DELLA REPUBBLICA ITALIANA E CODICE MILITARE PENALE DI PACE E DI GUERRA* [CONSTITUTION OF THE REPUBLIC OF ITALY AND PEACE-TIME AND WARTIME MILITARY CRIMINAL CODE] (1996).

86. See *supra* note 11 and accompanying text.

87. See *supra* note 12 and accompanying text.

88. Over the years, there has been a slow expansion of logistical support privileges through bilateral agreements, exchanges of diplomatic notes, and letters issued by past U.S. ambassadors.

89. Under Italian law, all dependents of military and civilian component personnel stationed in Italy are required to possess a current passport with proper visa at the time of entry, unless they are nationals of a European Union country. In practice, dependents who are U.S. citizens and who arrive with current U.S. passports, military family travel orders, and current military identification cards are usually permitted to enter the country, even without a proper visa. In contrast, dependents who are travelling with non-U.S. passports and without visas are usually issued a temporary visa, allowing time to obtain a *soggiorno* residency permit from the *questura* [police station] nearest the military installation where their sponsors are assigned. However, over the last several years, a small but increasing number of dependents (including dependents who were travelling on passports issued by Panama, the Dominican Republic, South Korea, Kuwait, and the Philippines) who arrived without proper visas were detained and/or threatened with immediate expulsion. In such cases, the USSSO intervenes directly with the Ministry of Foreign Affairs and the Ministry of Interior to allow these dependents to enter Italy and to obtain the needed *soggiorno* residency permits. Resolution of these situations usually takes place through telephone coordination, but some situations have required the filing of diplomatic notes. The USSSO has provided guidance to each service's personnel command concerning the problem. See Message, 251108Z Nov 97, American Embassy, Rome, subject: Dependent Visas (25 Nov. 1997).

While not obviating Italian visa requirements, passport endorsements which describe family members as "dependents" under the NATO SOFA have undoubtedly assisted family members without visas to enter Italy. See NATO SOFA, *supra* note 5, art. III, para. 3 (requiring members of the civilian component and dependents to be so described in their passports). Although such endorsements are supposed to be placed in U.S. passports as part of the process of preparing family members for overseas movement, neither the Department of State nor the Department of Defense can enter such endorsements into foreign passports.

publishes a quarterly newsletter which highlights important legal, diplomatic, and personnel developments. Additionally, the USSSO participates in semi-annual installation commanders conferences, which are sponsored by the U.S. Embassy's Counselor for Political/Military Affairs, and provides input for Italy Stationing and Sovereignty Working Group meetings.

Every May, the USSSO hosts the USSSO Conference, an annual legal conference in Rome for attorneys from various federal agencies and military commands.⁹¹ Designed to be a "working conference," the USSSO Conference serves as a forum for the discussion and resolution of legal issues affecting all U.S. forces in Italy. When new issues cannot be resolved at the conference, officials task specific offices to provide research, to coordinate proposed policies, and to disseminate information. The USSSO conferences also provide instruction and updates on Italy-specific legal issues, provide political/

military briefings by senior embassy personnel, and serve as a forum for attorneys from all of the services to meet and to better understand the functions of their respective offices and commands.⁹²

Conclusion

Although the United States has significantly reduced the number of personnel who are permanently stationed in Germany, the same is not true in Italy. As Italy's political, military, and legal environments change, the USSSO will continue its unique role in shaping legal policy for U.S. forces in Italy, while also representing U.S. forces before the government of Italy.

90. While Article III, paragraphs 1 and 2, of the NATO SOFA obviate the need for U.S. service members to comply with Italian visa and *soggiorno* permit requirements, the same is not true for members of the U.S. civilian component and the dependents of U.S. service members and civilian component employees. *Soggiorno* permits allow non-Italian citizens to maintain residence in, or work in, Italy. Civilians who do not have current *soggiornos* may be detained and are subject to deportation. In late 1996, the Ministry of Interior agreed to a USSSO suggestion that family cohesion *soggiorno* residency permits be issued for three years, the usual period a family member accompanies a service member on a command-sponsored tour.

91. Attendees regularly include attorneys from the EUCOM, Allied Forces Southern Europe, U.S. Army Europe, U.S. Naval Forces Europe, U.S. Air Force Europe, the Department of Justice, base legal offices, and several "stovepipe" organizations with offices in Italy. Senior civilian personnel officers who are responsible for the formulation of U.S. forces host-nation labor policy also attend.

92. The USSSO Conference is complemented by the annual Mediterranean Legal Conference (which is held each November) and the semiannual Senior Staff Judge Advocates Conference.